



determined using Method 5 (40 C.F.R. Part 60 Appendix A) and EPA Method 202 (40 C.F.R. Part 51 Appendix M). Compliance with this limit shall be measured by a stack test which SGCI shall conduct no later than twelve (12) months after the date control is required in Table 5 and once per Calendar Year thereafter.

g. Ruston Furnace #2 PM Emission Limits – By no later than December 31, 2012, SGCI shall comply with a PM emission limit of 76.8 tons of total PM per year for Ruston Furnace #2, calculated on a Calendar Year basis. Compliance with the limit shall be demonstrated by conducting an annual stack test using EPA Method 5 and Method 202 (40 C.F.R. Part 60 Appendix A). Initial testing shall be conducted before December 31, 2012, and once each Calendar Year thereafter. Compliance with the annual ton per year limit shall be calculated by using the following equation:

$$PM = \left[ \frac{PastTest \times 1stProd}{2000} \right] + \left[ \frac{NewTest \times 2ndProd}{2000} \right]$$

Where: PM = PM Emissions (tpy)

PastTest = Last Source test result (lb/ton).

NewTest = New test from the year for which emissions are being calculated (lb/ton).

1stprod = Production from January 1<sup>st</sup> through the Day prior to the Day the new source test is commenced (tons of glass).

2ndprod = Production from the Day of the new source test through the end of that same Calendar Year (tons of glass).

Note: If SGCI elects to do more than one test in a year, emissions calculated on the Days following the second test, will be based on that second test.

h. Wilson PM Emission Limits – By no later than December 31, 2012, SGCI shall comply with a PM emission limit of 172.5 tons of total PM per year for Wilson Furnaces #28 and #29 combined, calculated on a Calendar Year basis. Compliance with this limit shall be demonstrated with annual stack tests using EPA Method 5 and Method 202 (40 C.F.R. Part 60 Appendix A). Initial testing shall be conducted before December, 31, 2012, and once each Calendar Year thereafter. Compliance with the annual ton per year emission limit shall be calculated by summing the results of the following equation for each Furnace:

$$PM = \left[ \frac{PastTest \times 1stProd}{2000} \right] + \left[ \frac{NewTest \times 2ndProd}{2000} \right]$$

Where: PM = PM Emissions (tpy)

PastTest = Last Source test result (lb/ton).

NewTest = New test from the year for which emissions are being calculated (lb/ton).



1stprod = Production from January 1<sup>st</sup> through the Day prior to the Day the new source test is commenced (tons of glass).

2ndprod = Production from the Day of the new source test through the end of that same Calendar Year (tons of glass).

Note: If SGCI elects to do more than one test in a year, emissions calculated on the Days following the second test, will be based on that second test.

i. Existing State/Local Limits – The limits in Paragraph 9 do not replace any current State/local limits and do not relieve SGCI of its obligation to comply with those limits.

j. Where a Facility has more than one Furnace routed to the same stack and subject to the same emission limits, compliance with the limits on each Furnace set forth herein shall be determined using the following equation:

$$PM \text{ Emission Rate} = \frac{(\text{lbs of PM from ST})}{\text{Daily production (tons)}} \times \frac{24 \text{ hours}}{\text{source test length (hrs)}}$$

Where: PM Emission Rate = PM Emissions rate (lb PM/ton glass)

Lbs of PM from ST = The pounds of PM measured during the entire length of the source test (including all runs).

Daily production = The amount of glass produced on all Furnaces during the Day of the source test.

Source test length = Length of the entire source test (including all runs), in hours.

1 If the resulting number is below the limit set forth on each Furnace  
2 individually, then all included Furnaces are in compliance. If the resulting  
3 number is above the limits set forth on each Furnace individually, then all  
4 included Furnaces are in noncompliance.

5 k. Where a Facility has more than one Furnace subject to the same  
6 emission limit, but routed to different stacks, compliance with the pounds  
7 per ton stack test limits set forth herein may be determined by averaging the  
8 emissions from Furnaces subject to the same emission limit at a given  
9 Facility. The average of the stack test results would be calculated on a  
10 weighted average by taking the source test from each unit and multiplying  
11 by the actual production of that unit in that year and dividing by the total  
12 Facility-wide production for that year. Then the resulting weighted numbers  
13 would be calculated for each additional Furnace and added together to  
14 calculate the combined pounds of emissions per ton of glass for the Facility.

15 l. Compliance with the New Source Performance Standards (NSPS)

16 i. Some of SGCI's existing Furnaces are already subject to 40  
17 C.F.R. Part 60, Subpart CC. On the dates specified in this  
18 Paragraph 9.1., SGCI's remaining Furnaces shall be  
19 "affected facilities" pursuant to 40 C.F.R. Part 60, Subpart  
20 CC.

- 1                   ii. Ruston Furnace #1, Port Allegany Furnaces #1 and #3,  
2                   Henderson Furnace #2, Waxahachie, and Sapulpa Furnace  
3                   #50, will be “affected facilities” under 40 C.F.R. Part 60,  
4                   Subparts A and CC, 180 Days after installation and  
5                   certification of the Continuous Opacity Monitoring System  
6                   (COMS).
- 7                   iii. Seattle Furnace #4, which already has a COMS, will  
8                   become an “affected facility” under 40 C.F.R. Part 60,  
9                   Subparts A and CC, within 180 Days of the Date of Entry.
- 10                  iv. Dolton Furnaces #1, #2, and #3 shall become “affected  
11                  facilities” under 40 C.F.R. Part 60, Subparts A and CC, 180  
12                  Days after installation of the Dry Scrubber/ESP and SCR,  
13                  but no later than December 31, 2014.
- 14                  v. Furnaces installing an ESP or CCSS shall become “affected  
15                  facilities” under 40 C.F.R. Part 60, Subparts A and CC, 180  
16                  Days after the compliance dates specified in Table 5.
- 17                  vi. SGCI must certify for any Furnace that became an  
18                  “affected facility” in that year, whether the Furnace is in  
19                  compliance with 40 C.F.R. Part 60, Subparts A and CC in  
20                  the annual report for the year.



- 1 10. **Abnormally Low Production Rate Days** - The following values shall be  
 2 used to determine Abnormally Low Production Rate Days for each Furnace.

Table 6 – Abnormally Low Production Rate Day Thresholds	
Facility and Furnace	Abnormally Low Production Rate Day Threshold * (tons/day)
Milford, MA – Furnace #15	105
Milford, MA – Furnace #16	102
Port Allegany, PA – Furnace #1	73
Port Allegany, PA – Furnace #3	99
Henderson, NC – Furnace #1	112
Henderson, NC – Furnace #2	116
Wilson, NC – Furnace #28	193
Wilson, NC – Furnace #29	175
Lincoln, IL – Furnace #1	149
Dolton, IL – Furnace #1	102
Dolton, IL – Furnace #2	98
Dolton, IL – Furnace #3	95
Dunkirk, IN – Furnace #1	175
Dunkirk, IN – Furnace #2	193
Burlington, WI – Furnace #6	140
Burlington, WI – Furnace #7	140
Ruston, LA – Furnace #1	103
Ruston, LA – Furnace #2	170
Sapulpa, OK – Furnace #50	126
Sapulpa, OK – Furnace #51	114
Sapulpa, OK – Furnace #52	123
Waxahachie, TX – Furnace #1	114
Pevely, MO – Furnace #20	102
Pevely, MO – Furnace #21	161
Madera, CA – Furnace #1	158
Seattle, WA – Furnace #2	104
Seattle, WA – Furnace #3	90
Seattle, WA – Furnace #4	70
Seattle, WA – Furnace #5	99

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\* Unless capacity subsequently increases as authorized by a revised permit limit.

If production is increased by a Permit, the Abnormally Low Production Rate Day Threshold would be 35 percent of the new permitted production (or design production, where there is no permitted production) as determined on a daily basis (for the purpose of defining the Abnormally Low Production Rate Day Threshold).

11. **Shut down Units:** The following Furnaces have ceased operations and shall permanently remain closed:

Table 7 – Permanently Closed Furnaces

Carteret, New Jersey – Furnace #1 (only Furnace)
Port Allegany, Pennsylvania – Furnace #2

12. **Good Operation** - At all times, including periods of Abnormally Low Production Rate Days, Furnace Startup, Control Device Startup, Malfunction, Maintenance, and Color Transition, SGCI shall, to the extent practicable, maintain and operate all Furnaces and all control devices in a manner consistent with good air pollution control practice for minimizing emissions.

13. **Maintenance**

a. Scheduled or preventative Furnace Maintenance, including checker raking and burning, shall not exceed ninety-six (96) Operating hours annually and shall be conducted only when any downstream control devices required by this Consent Decree (SCR, Scrubber, CCSS, ESP, etc.), if applicable, are operating.

1        b. Control system scheduled or preventative Maintenance – Scheduled or  
2        preventative Maintenance of the emission control system shall occur when  
3        the Furnace(s) connected to the control system are not Operating. However,  
4        for any Calendar Year which is a Continuous Operating Year, scheduled or  
5        preventative maintenance may be conducted while the Furnace(s) are  
6        Operating. During these Continuous Operating Years, Maintenance lasting  
7        greater than twenty-four consecutive hours, shall occur only during  
8        Abnormally Low Production Rate Days. Control system Maintenance must  
9        be done in compliance with the following:

- 10                    i. Bypass for the purpose of preventative Maintenance of any  
11                    SCR shall not exceed 144 hours annually in any Calendar  
12                    Year.
- 13                    ii. Bypass of the ESP shall not exceed 144 hours annually in  
14                    any Calendar Year. Furthermore if the ESP is bypassed, the  
15                    Scrubber System must be bypassed as well.
- 16                    iii. Bypass of the Scrubber System shall not exceed 144 hours  
17                    annually in any Calendar Year. Bypass of the Scrubber  
18                    System required by the bypass of the ESP shall be included  
19                    in the 144 hours.



iv. Bypass of the CCSS shall not exceed 144 hours annually in any Calendar Year.

14. **Source Testing** – Each source test shall be conducted in accordance with the requirements of the specified test method and shall be performed under representative operating conditions and shall not be conducted during periods of Abnormally Low Production Rate Days, Furnace Startup, Control Device Startup, Malfunction of the Furnace or relevant control system, Maintenance of the Furnace or relevant control system, or Color Transition.

15. **Installation, Calibration, Certification, Maintenance, and Operation of CEMS and COMS**

a. In lieu of any parametric monitoring, by no later than the respective dates listed in Table 8 for each Furnace, SGCI shall install, calibrate, certify, maintain, and operate CEMS and/or COMS as specified in Subsection b. through e. of this Paragraph (where a CEMS or COMS is being installed at a Facility where more than one Furnace is routed through a single ESP/Scrubber or CCSS, only one CEMS/COMS unit is required). The CEMS or COMS certification cannot occur during periods of Abnormally Low Production Rate Days, Furnace Startup, Control Device Startup, Malfunction, Maintenance, or Color Transition. SGCI shall commence a

1 new CEMS Certification on a particular Furnace on the first Operating Day

2 after each CEMS Certification Event concludes on that Furnace.

Table 8 – Continuous Monitoring Systems

Facility	NO <sub>x</sub> CEMs Deadline	SO <sub>2</sub> CEMs Deadline	COMs Deadline (subject to 15.b.)
Madera #1*	Date of Entry	Date of Entry	Date of Entry
Lincoln	Date of Entry	Date of Entry	Date of Entry
Ruston #1	December 31, 2010	December 31, 2010	December 31, 2010
Ruston #2	December 31, 2009	December 31, 2009	Date of Entry
Port Allegany #1	December 31, 2013	December 31, 2009	December 31, 2009
Port Allegany #3	December 31, 2013	December 31, 2009	December 31, 2009
Burlington #6	December 31, 2009	December 31, 2009	Date of Entry
Burlington #7	December 31, 2009	December 31, 2009	Date of Entry
Henderson #1	December 31, 2009	December 31, 2009	Date of Entry
Henderson #2	December 31, 2009	December 31, 2009	December 31, 2009
Wilson #28	December 31, 2010	December 31, 2010	Date of Entry
Wilson #29	December 31, 2010	December 31, 2010	Date of Entry
Milford #15*	December 31, 2010	December 31, 2010	Date of Entry
Milford #16*	December 31, 2015	December 31, 2010	Date of Entry
Dunkirk #1 & #2	December 31, 2012	December 31, 2012	Date of Entry
Waxahachie	December 31, 2013	December 31, 2013	December 31, 2013
Seattle #2	December 31, 2015	December 31, 2015	Date of Entry
Seattle #3	December 31, 2011	December 31, 2011	Date of Entry
Seattle #4	December 31, 2011	December 31, 2011	Date of Entry
Seattle #5	December 31, 2015	December 31, 2011	n/a
Sapulpa #50	December 31, 2011	December 31, 2011	December 31, 2011
Sapulpa #51	December 31, 2011	December 31, 2011	Date of Entry
Sapulpa #52	December 31, 2011	December 31, 2011	Date of Entry
Pevely #20	December 31, 2013	December 31, 2013	Date of Entry



Pevely #21	December 31, 2013	December 31, 2013	Date of Entry
Dolton #1	December 31, 2014	December 31, 2014	n/a
Dolton #2	December 31, 2014	December 31, 2014	n/a
Dolton #3	December 31, 2014	December 31, 2014	n/a

\* Furnaces that currently have a combined stack exhaust.

b. If SGCI chooses to install CCSS on any of the above facilities where CCSS is an option, then it will not have to install COMs on that Furnace. If SCGI installs an SCR on any of the above facilities, then it will not have to install COMS on that Furnace.

c. SGCI shall install, calibrate, certify, maintain, and operate NO<sub>x</sub> and SO<sub>2</sub> CEMS as required by Paragraph 15.a. as follows:

i. Subject to Paragraph 15.c.ii., the NO<sub>x</sub> and SO<sub>2</sub> CEMS shall monitor continuously and record the hourly NO<sub>x</sub> and SO<sub>2</sub> emission concentration (parts per million) during each Operating Day from each Furnace (or Furnaces where more than one Furnace subject to the same emission limit is routed through a common exhaust stack). The CEMS shall calculate and record in units of parts per million of NO<sub>x</sub> and SO<sub>2</sub> emitted.

ii. The CEMS shall be installed, calibrated, certified, maintained, and operated in accordance with 40 C.F.R. § 60.13, 40 C.F.R. Part 60 Appendix B (Performance



1 Specification 2) and 40 C.F.R. Part 60 Appendix F (Quality  
2 Assurance Procedures).

3 d. Where the Consent Decree requires the use of CEMS to determine an  
4 emission rate (pound per ton or ton per year), then SGCI is required to  
5 either:

6 i. Follow requirements set forth above in 15.c. for the CEMS  
7 and then use an EPA approved method for calculating flow.  
8 In conjunction with the EPA approved flow method  
9 calculation, the data acquisition and handling system for the  
10 CEMS shall convert the ppm values into pound per hour  
11 values where the limit is expressed in pounds of pollutant  
12 per ton of glass produced. At the end of each Operating  
13 Day, the data acquisition and handling system shall divide  
14 the total daily emissions in pounds per day for valid CEMS  
15 hourly data by the total tons of glass produced during the  
16 Operating Day (reduced proportionally based on the valid  
17 CEMS data hours) to describe the pound per ton emission  
18 rate for the Operating Day. This number shall be recorded  
19 in units of pounds of pollutant per ton of glass produced; or

1                   ii. Install, calibrate, certify, maintain, and operate NO<sub>x</sub> and  
2                   SO<sub>2</sub> Continuous Emission Rate Monitoring System  
3                   (CERMS) as follows:

- 4                   1. The CERMS shall be installed, calibrated, certified,  
5                   maintained, and operated in accordance with 40  
6                   C.F.R. § 60.13, 40 C.F.R. Part 60 Appendix B  
7                   (Performance Specification 6), and 40 C.F.R. Part  
8                   60 Appendix F (Quality Assurance Procedures);  
9                   2. SGCI must comply with all monitoring, record  
10                  keeping and reporting requirements in 40 C.F.R. §  
11                  60.13 and 40 C.F.R. Part 60 Appendix B  
12                  (Performance Specification 6); and  
13                  3. In conjunction with the flow rate monitoring  
14                  device, the data acquisition and handling system for  
15                  the CEMS shall convert the ppm values into pound  
16                  per hour values where the limit is expressed in  
17                  pounds of pollutant per ton of glass produced. At  
18                  the end of each Operating Day, the data acquisition  
19                  and handling system shall divide the total daily  
20                  emissions in pounds per day for valid CEMS hourly

1 data by the total tons of glass produced during the  
2 Operating Day (reduced proportionally based on the  
3 valid CEMS data hours) to describe the pound per  
4 ton emission rate for the Operating Day. This  
5 number shall be recorded in units of pounds of  
6 pollutant per ton of glass produced for the  
7 applicable Day.

8 e. SGCI shall install, calibrate, certify, maintain, and operate a COMS as  
9 required by Paragraph 15.a. as follows:

- 10 i. SGCI shall install, calibrate, certify, maintain, and operate  
11 continuously a COMS during each Operating Day as  
12 required by Paragraph 15.a. in accordance with  
13 Performance Specification 1 of 40 C.F.R. Part 60 Appendix  
14 B; and
- 15 ii. SGCI must comply with all monitoring, record keeping and  
16 reporting requirements in 40 C.F.R. § 60.13 and 40 C.F.R.  
17 Part 60 Appendix B (Performance Specification 1).

## V. CIVIL PENALTY

16. SGCI shall pay to the United States and the Affected States the sum of \$2,250,000 as a civil penalty, together with interest accruing from the Date of Lodging at the rate specified in 28 U.S.C. § 1961.

17. The United States' portion of the civil penalty shall be paid as follows: (a) SGCI shall pay \$575,000 plus interest within thirty (30) Days after the Date of Entry of this Consent Decree; and (b) SGCI shall pay \$575,000 plus interest within twelve (12) months after the Date of Entry of this Consent Decree. The civil penalty amount set forth in this Paragraph shall be paid by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to SGCI, following the Date of Lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Washington, at 5220 United States Courthouse, 700 Stewart Street, Seattle, Washington 981010-1671, (206) 553-7970. At the time of payment, SGCI shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), and shall reference the civil action number and DOJ case number 90-5-2-1-06982/1, to the United States in

1 accordance with Section XVII of this Decree (Notices); by email to

2 acctsreceivable.CINWD@epa.gov; and by mail to:

3 EPA Cincinnati Finance Office  
 4 26 Martin Luther King Drive  
 5 Cincinnati, Ohio 45268

6 18. SGCI shall not deduct any penalties paid under this Decree pursuant to this  
 7 Section or Section XI (Stipulated Penalties) in calculating its federal or State or  
 8 local income tax.

9 19. SGCI shall pay the Affected States' portion of the civil penalty to the  
 10 Affected State listed in Table 9 plus interest per Paragraph 16, if applicable, within  
 11 thirty (30) Days after the Date of Entry of this Consent Decree in accordance with  
 12 the instructions in Table 9:

Table 9 – State and Local Penalty Amounts

State	Amount	Payment Instructions
Massachusetts	\$ 100,000.00	<p>Payment shall be made by certified or bank check made payable to the "Commonwealth of Massachusetts" and delivered to:            Office of the Attorney General,            Environmental Protection Division,            1 Ashburton Place, 18th Floor,            Boston, MA 02108,            Attention: Frederick D. Augenstein, Assistant Attorney General.</p> <p>SGCI shall clearly write on the face of the certified or bank check its federal employer identification number and the words "In the Matter of United States of America, et al. v. Saint-Gobain Containers, Inc. – General Fund.</p>





Pennsylvania	\$100,000.00	Corporate check made payable to the "Commonwealth of Pennsylvania – Clean Air Fund" and mailed to: Air Quality Program Manager, PA Department of Environmental Protection, 230 Chestnut Street Meadville, PA 16335
North Carolina	\$100,000.00	Payment should be made directly to the order of the North Carolina Department of Environment and Natural Resources (NCDENR). Enforcement Group Payment Department of Environment and Natural Resources Division of Air Quality 1641 Mail Service Center Raleigh, NC 27699-1641
Illinois	\$100,000.00	Certified check or money order payable to "Illinois EPA for deposit into the EPTF" and mailed to: Illinois Environmental Protection Agency Fiscal Services 1021 North Grand Avenue East P. O. Box 19276 Springfield, IL 62794-9276
Indiana	\$100,000.00	The check should be made out to the: "Environmental Management Special Fund" and shall be mailed to: Indiana Department of Environmental Management Cashier - Mail Code 50-10C 100 North Senate Avenue Indianapolis, IN 46204-2251
Wisconsin	\$100,000.00	Certified check payable to: "State of Wisconsin Department of Justice" and mailed to: Wisconsin Department of Justice Attention: Thomas Dawson 17 West Main Street Madison, Wisconsin 53707-7857



Oklahoma Department of Environmental Quality	\$100,000.00	Check payable and mailed to: Oklahoma Department of Environmental Quality Finance and Human Resources Management P.O.Box 2036 Oklahoma City, OK 73101 Attention: Accounts Receivable
Louisiana	\$100,000.00	Certified check payable to the "Louisiana Department of Environmental Quality" and mailed to: Darryl Serio Fiscal Director Office of Management and Finance LDEQ P.O. Box 4303 Baton Rouge, Louisiana 70821-4303
Missouri	\$100,000.00	Certified check payable to the "State of Missouri (Jefferson County Treasurer)" and mailed to: Jo Ann Horvath Office of the Attorney General P. O. Box 899 Jefferson City, MO 65102-0899
Washington	\$20,000.00	Make check payable to: Department of Ecology. The Memorandum on the check should reference NR0900800 and "Saint-Gobain Settlement." Mail the check to: Department of Ecology Cashiering Unit P.O. Box 47611, Olympia, WA 98504-7611
Puget Sound Clean Air Agency	\$80,000.00	Check payable to "Puget Sound Clean Air Agency": Dennis McLerran Executive Director Puget Sound Clean Air Agency 1904 3rd Ave, Suite 105 Seattle WA USA 98101

San Joaquin Valley Air Pollution Control District	\$100,000.00	The description of the payment should be: St Gobain Consent Decree Payment. The settlement payment would be sent to: Phil Jay District Counsel San Joaquin Valley Air Pollution Control District 1990 East Gettysburg Avenue Fresno, CA 93720-0244
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20. If any portion of the civil penalty due to the United States or the Affected State is not paid when due, SGCI shall pay interest on the amount past due, accruing from the Date of Lodging through the date of payment, at the rate specified in 28 U.S.C. § 1961. Interest payment under this Paragraph shall be in addition to any stipulated penalty due.

#### VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. State Supplemental Environmental Project (SEP) – Tulsa, Oklahoma SEP – In accordance with the requirements set forth in this Section, on or before 30 days after Entry of this Consent Decree, SGCI will pay \$250,000 into the NO<sub>x</sub> Emissions – Tulsa Air Shed Revolving Fund, to be established by the Oklahoma DEQ, for the purpose of funding the reduction of NO<sub>x</sub> emissions in the Tulsa, Oklahoma air shed.

22. Millville, New Jersey SEP –

a. SGCI currently owns approximately 156.95 tpy SO<sub>2</sub> and 46.15 tpy TSP Creditable Emission Reduction (CERs) associated with the permanent



1 shutdown of two glass Furnaces at its Millville facility, formerly located at  
2 328 South Second Street, Millville, New Jersey. SGCI agrees that it will not  
3 transfer, sell, or use any SO<sub>2</sub>, TSP, PM or PM<sub>2.5</sub> emission credits or  
4 allowances associated with its Millville facility. SGCI agrees to request that  
5 New Jersey Department of Environmental Protection (DEP) permanently  
6 remove and retire all remaining emission credits in the New Jersey Emission  
7 Credit Bank, Bank Log Numbers BK-99-0013 and BK-99-0014.

8 b. Not later than 30 days after Entry, SGCI shall mail and provide to  
9 EPA a copy of the letter (in the form attached hereto as Exhibit B) to New  
10 Jersey DEP surrendering the CERs and requesting that all credits associated  
11 with the former Millville facility in Banking Log Numbers BK-99-0013 and  
12 BK-99-0014 be permanently retired and removed from the New Jersey  
13 Emission Credit Bank. SGCI shall provide to EPA verification from New  
14 Jersey, which includes the number of credits, that the credits have been  
15 permanently retired and removed from the New Jersey Emission Credit  
16 Bank.

17 23. By signing this Consent Decree, SGCI certifies that it is not required, and  
18 has no liability under any federal, State, regional, or local law or regulation or  
19 pursuant to any agreements or orders of any court, to perform or develop the  
20 projects identified in Paragraph 21 and 22 above. SGCI further certifies that it has

1 not applied for or received, and will not in the future apply for or receive: (i) credit  
2 as a Supplemental Environmental Project or other penalty offset in any other  
3 enforcement action for the projects set forth in Paragraph 21 and 22 above; (ii)  
4 credit for any emissions reductions resulting from the projects set forth in  
5 Paragraph 21 and 22 above in any federal, State, regional, or local emissions  
6 trading or early reduction program; (iii) a deduction from any federal, State,  
7 regional, or local tax based on its participation in, performance of, or incurrence of  
8 costs related to the projects set forth in Paragraph 21 and 22 above.

9 24. SGCI shall include in the first report required by Section IX a final report for  
10 the SEPs being performed pursuant to this Section. In addition, the report required  
11 by Section IX will contain the following information with respect to each of the  
12 projects:

- 13 a. A detailed description of the project as implemented; and
- 14 b. A certification that the project has been fully implemented pursuant to  
15 the provisions of this Consent Decree

16 25. SGCI agrees that in any public statements regarding the SEPs, it must  
17 clearly indicate that the projects are being undertaken as part of the settlement of  
18 an enforcement action for alleged violation of the Clean Air Act and corollary  
19 State statutes.

26. For federal income tax purposes, SGCI agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

#### VII. EMISSION CREDIT GENERATION

27. Nothing in this Consent Decree shall preclude SGCI from using, selling or transferring surplus Emissions Credits that may arise as a result of:

a. Activities that reduce emissions from SGCI Facilities prior to the Date of Entry of this Consent Decree, except for the installation of controls and monitors at the Port Allegany and Ruston Facilities that are required by this Consent Decree. Also SGCI may not sell credits from the closure of the Carteret Facility or the Port Allegany #2 Furnace.

b. Achievement and Maintenance of emission rates (including through permanent closure of a Furnace) at SGCI Facilities below the emission limits required by this Consent Decree, so long as SGCI timely reports the generation of such surplus Emissions Credits in accordance with Section IX (Reporting Requirements) of this Consent Decree. For purposes of this Paragraph, surplus Emissions Credits equal the number of tons of PM<sub>10</sub>, PM<sub>2.5</sub>, NO<sub>x</sub> or SO<sub>2</sub> that SGCI removed from its emissions that are in excess of the emissions reductions required by this Consent Decree.

1 28. SGCI may not use, purchase, or otherwise obtain Emission Credits solely to  
2 comply with the requirements of this Consent Decree; however, notwithstanding  
3 the preceding clause, if SGCI modifies a Facility in a nonattainment area, nothing  
4 in this Consent Decree shall preclude SGCI from acquiring or utilizing any legally  
5 required Emission Credits, nor relieve SGCI of any obligation to obtain Emission  
6 Credits to use as offsets in permitting the Facility modification.

7 29. For any and all actions taken by SGCI to comply with the requirements of  
8 this Consent Decree, any emission reductions shall not be considered a creditable  
9 contemporaneous emission decrease for the purpose of obtaining netting reductions  
10 and offsets under the PSD and Clean Air Act's Nonattainment NSR programs  
11 respectively. This includes any decreases from the closure of the Carteret Facility  
12 and the Port Allegany Furnace #2.

13 Nothing in this Consent Decree is intended to prohibit SGCI from seeking to  
14 utilize emission reductions from the Installation of Controls required by this  
15 Consent Decree in determining whether a project on the same Furnace that  
16 includes both the Installation of Controls under this Consent Decree and other  
17 simultaneous construction that is permitted at the same time (either a single permit  
18 or multiple permits), triggers New Source Review.

## VIII. PERMITS

30. Whenever SGCI is required to obtain a Permit from EPA or an Affected State for the purpose of compliance with Section IV of this Consent Decree, EPA or the Affected State shall include in the Permit for the installation of control devices, monitoring devices and the contemporaneous Furnace rebuild project the emission controls, emission limits, averaging periods, monitoring requirements, compliance determination, and compliance schedule set forth in this Decree. In issuing such Permit neither EPA nor the Affected State may make material changes to the emission controls, emission limits, averaging periods, monitoring requirements, compliance determination, and compliance schedule specified in Section IV of this Decree. However, notwithstanding the preceding sentence, nothing in this Consent Decree shall prevent EPA or an Affected State from issuing, amending, or revising a Permit for emission controls, emission limits, averaging periods, monitoring requirements, compliance determination, or compliance schedules only if such requirements are mandated by an existing Consent Decree, SIP, rule, regulation, State law, or local law. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires SGCI to secure a permit to authorize construction or operation of any device, including all preconstruction, construction, and operating permits required under State law, SGCI shall make





1 such application in a timely manner. EPA and/or the Affected States will use  
2 reasonable efforts to expeditiously review all permit applications submitted by  
3 SGCI in order to meet the requirements of this Consent Decree.

4 31. When Permits are required as described in Paragraph 30, SGCI shall  
5 complete and submit applications for such Permits to the appropriate permitting  
6 authorities at least six months in advance of the applicable date to allow sufficient  
7 time for all legally-required processing and review of the Permit request, including  
8 requests for additional information by the permitting authorities. Any failure by  
9 SGCI to submit a timely Permit application for any SGCI Facility or Furnace shall  
10 bar any use by SGCI of Section XII (Force Majeure) of this Consent Decree, where  
11 a Force Majeure claim is based on permitting delays.

12 32. Notwithstanding the reference to Title V or other federally-enforceable  
13 Permits in this Consent Decree, the enforcement of such Permits shall be in  
14 accordance with their own terms and the Act. The Title V or other federally-  
15 enforceable Permits shall not be enforceable under this Consent Decree, although  
16 any term or limit established by or under this Consent Decree shall be enforceable  
17 under this Consent Decree regardless of whether such term has or will become part  
18 of a Title V or other federally-enforceable Permit.

19 33. Within one year from commencing operation of each pollution control  
20 device to be installed, upgraded, or operated on a Furnace under this Consent

*gc*

1 Decree, SGCI shall apply to include the requirements and limitations enumerated  
2 in this Consent Decree in either a federally-enforceable Permit issued under the  
3 applicable State SIP or amendments to such State's SIP. The Permit or SIP  
4 amendment shall require compliance with the following:

5 a. Any applicable emission limits specified in Section IV of this Consent  
6 Decree using the method of calculation of emissions and averaging periods  
7 specified herein;

8 b. Any applicable annual stack tests or continuous monitoring  
9 requirements as specified herein; and

10 c. Reporting and record-keeping requirements associated with the  
11 control device as specified herein.

12 34. Nothing in this Consent Decree shall relieve SGCI from the obligation to  
13 comply with Permits, emission limits, or other requirements of the Clean Air Act.

14 IX. REPORTING REQUIREMENTS

15 35. SGCI shall submit the following reports:

16 a. Until the termination of this Consent Decree, SGCI shall submit to  
17 EPA and to the Affected States an annual progress report no later than  
18 March 1 of each year. Each annual progress report shall contain the  
19 following information with respect to the Calendar Year preceding its  
20 submission:

- i. Work performed and progress made toward implementing the requirements of Section IV;
  - ii. Except for Calendar Year 2009, actual annual emissions of SO<sub>2</sub>, NO<sub>x</sub> and PM from each Furnace measured using CEMS, or if no CEMS, the most recent source test(s);
  - iii. Any significant problems encountered or anticipated in complying with the requirements of Section IV, together with implemented or proposed solutions;
  - iv. Unless previously provided, final testing reports from tests conducted pursuant to this Consent Decree that reflect an accurate summary of emissions from a Furnace as compared to the Consent Decree requirement;
  - v. Status of permit applications and a summary of all permitting activity pertaining to compliance with this Consent Decree; and
  - vi. With respect to the first annual report, the SEP reports required by Paragraph 24.
- b. A copy of any reports to Affected States pertaining to compliance with this Consent Decree shall be provided to EPA either at the time of submission to the Affected State or in the annual report.

1 c. If SGCI violates, or has reason to believe that it may have violated,  
2 any requirement of this Consent Decree, SGCI shall notify the United States  
3 and the Affected State of such violation and its duration or anticipated likely  
4 duration, in writing and by telephone, email or facsimile, within ten (10)  
5 business days of the time SGCI first becomes aware of the violation or  
6 potential violation. The notice should explain the violation's likely cause  
7 and the remedial steps taken, or to be taken, to prevent future violations. If  
8 the cause of a violation cannot be fully explained at the time notice is given,  
9 SGCI shall so state in the notice. After notice is given, SGCI shall  
10 investigate the cause of the violation and shall then submit an amendment to  
11 the report, including a full explanation of the cause of the violation, within  
12 thirty (30) Days of the Day SGCI becomes aware of the cause of the  
13 violation. Nothing in this Paragraph or the following Paragraph relieves  
14 SGCI of its obligation to provide the notice required by Section XII of this  
15 Consent Decree (Force Majeure).

16 d. Whenever any violation of this Consent Decree or any other event  
17 affecting SGCI's performance under this Decree, or the performance of any  
18 of its glass manufacturing Facilities, may pose an immediate threat to the  
19 public health or welfare or the environment, SGCI shall notify EPA and the  
20 Affected State, orally or by electronic or facsimile transmission as soon as

possible, but no later than twenty-four (24) hours after SGCI first knew of, or should have known of, the violation or event.

36. As part of its annual reports, SGCI shall provide EPA with a copy of any of the following which were produced in the preceding Calendar Year: each application for a Permit, or Permit amendment, to address or comply with any provision of this Consent Decree, as well as a copy of any Permit proposed as a result of such application.

37. All reports shall be submitted to the persons and in the manner designated in Section XVII (Notices).

38. Each report submitted by SGCI under this Section shall be signed by a plant manager, a corporate official responsible for environmental management and compliance, or a corporate official responsible for plant operations of SGCI, and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible

1 for obtaining the information, that the information is true, accurate and  
2 complete. I am aware that there are significant penalties for submitting false  
3 information, including the possibility of fines and imprisonment for  
4 knowingly and willfully submitting a materially false statement.

5 39. The reporting requirements of this Consent Decree do not relieve SGCI of  
6 any reporting obligations required by the Act or implementing regulations, or by  
7 any other federal, State, or local law, regulation, permit, or other requirement. The  
8 reporting requirements of this Section are in addition to any other reports, plans or  
9 submissions required by other Sections of this Consent Decree.

10 40. Any information provided pursuant to this Consent Decree may be used by  
11 the United States and any Affected State in any proceeding to enforce the  
12 provisions of this Consent Decree and as otherwise permitted by law and may be  
13 made available to the public upon request, if not otherwise protected as  
14 confidential business information, pursuant to 40 C.F.R. Part 2.

15 X. REVIEW AND APPROVAL OF SUBMITTALS

16 41. Where this Consent Decree requires that SGCI seek approval (other than  
17 applying for a Permit) before undertaking any action, EPA will review the plan,  
18 report, or other item and after consultation with the Affected State, shall in writing:

- 19 a. approve the submission; or  
20 b. disapprove the submission.

42. If the submission is approved pursuant to the preceding Paragraph, SGCI shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document.

43. If the submission is disapproved pursuant to Paragraph 41 (b), SGCI shall, either: (i) within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, for approval, in accordance with the preceding Paragraphs; or (ii) submit the matter to Dispute Resolution under Section XIII of this Consent Decree. If the resubmission is approved, SGCI shall proceed in accordance with the preceding Paragraph.

44. Any stipulated penalties applicable to the original submission, as provided in Section XI of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved.

45. If a resubmitted plan, report, or other item is disapproved, EPA, after consultation with the Affected State, may again require SGCI to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/ themselves correct any deficiencies, subject to SGCI's right to invoke Dispute Resolution and the right of EPA, after consultation with the Affected State, to seek stipulated penalties as provided in the preceding Paragraphs.

XI. STIPULATED PENALTIES

46. SGCI shall be liable for stipulated penalties to the United States and the Affected State for violations of this Consent Decree as specified below, unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time. Unless otherwise specified herein, stipulated penalties shall be payable as follows: 50 percent to the United States and 50 percent to the Affected State.

47. Failure to Pay Civil Penalty: If SGCI fails to pay any portion of the civil penalty required to be paid under Section V of this Consent Decree (Civil Penalty) when due, SGCI shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late. Late payment of the civil penalty shall be made in accordance with Section V of this Consent Decree.

48. Emission Limits: The following stipulated penalties shall accrue per violation for each violation of an NO<sub>x</sub>, SO<sub>2</sub>, and/or PM emission limit specified in Paragraphs 7- 9 in Section IV of this Consent Decree.

a. Where the violation is less than or equal to 10 percent in excess of the applicable emission limit, concentration limit, or removal efficiency measured on a 30-day rolling average:



Penalty Per Violation Per Day	Period of Noncompliance (unit-by-unit)
\$750	1st through 30th Day
\$1500	31st Day and beyond

b. Where the violation is greater than 10 percent in excess of the emission limit, concentration limit, or removal efficiency measured on a 30-day rolling average:

Penalty Per Violation Per Day	Period of Noncompliance (unit-by-unit)
\$1500	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$2250	15th through 30th Day
\$3000	31st Day and beyond

c. Emission Limits: For each NO<sub>x</sub>, SO<sub>2</sub> and/or PM stack test conducted as required in Paragraph 7.a., 8.g.v., 9.g., or 9.h. where the applicable standard is exceeded, a stipulated penalty of \$20,000 shall accrue per violation per Calendar Year. For any other NO<sub>x</sub>, SO<sub>2</sub> and/or PM stack test conducted as required by Paragraphs 7 - 9, a stipulated penalty of \$5,000 shall accrue per violation per Calendar Year.

49. Installation of Controls: The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in this Consent Decree regarding installation and operation of emission controls by the dates outlined herein:

Penalty Per Violation Per Day	Period of Noncompliance (unit-by-unit)
\$2250	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$3500	15 <sup>th</sup> through 30 <sup>th</sup> Day
\$5000	31 <sup>st</sup> Day and beyond

50. Installation of CEMS: The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in this Consent Decree regarding the installation and operation of a CEMS by the dates outlined herein:

Penalty Per Violation Per Day	Period of Noncompliance (unit-by-unit)
\$300	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$600	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$1200	61 <sup>st</sup> Day and beyond

51. Permitting Requirements: The following stipulated penalties shall accrue per violation per Day for each violation of any requirement identified in this Consent Decree relating to the application for Permits by the dates outlined herein:

Penalty Per Violation Per Day	Period of Noncompliance for each Permit
\$750	1 <sup>st</sup> through 14 <sup>th</sup> Day
\$1250	15 <sup>th</sup> through 30 <sup>th</sup> Day
\$2000	31 <sup>st</sup> Day and beyond

52. Recordkeeping and Reporting Requirements and Certification of CEMS or COMS: The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of this Consent Decree relating to the

1 submission of reports, the provision of notice, and the certification of CEMS or  
2 COMS by the dates outlined herein:

Penalty Per Violation Per Day	Period of Noncompliance
\$250	1st through 14th Day
\$500	15th through 30th Day
\$1000	31st Day and beyond

3 53. SEPs: If SGCI fails to complete the Sapulpa, Oklahoma SEP in accordance  
4 with Paragraph 21, SGCI shall pay a stipulated penalty of \$500,000. If SGCI fails  
5 to complete the Millville, New Jersey SEP in accordance with Paragraph 22, SGCI  
6 shall pay a stipulated penalty of \$500,000.

7 54. Furnace Stabilization Phase: A stipulated penalty of \$750 shall accrue per  
8 violation per day for each violation of Paragraph 6.y.iii. in Section III.

9 55. Stipulated penalties under this Section shall begin to accrue on the Day after  
10 performance is due or on the Day a violation occurs, whichever is applicable, and  
11 shall continue to accrue until performance is satisfactorily completed or until the  
12 violation ceases. Stipulated penalties shall accrue simultaneously for separate  
13 violations of this Consent Decree. The per day penalties do not increase from one  
14 tier to the next unless the violations are continuous.

15 56. SGCI shall pay all stipulated penalties to the United States, and/or the  
16 Affected State as the case may be, within thirty (30) Days of receipt of written  
17 demand to the SGCI designee set forth in Paragraph 90 from the United States or

1 the Affected State as the case may be unless SGCI elects within twenty (20) Days  
2 of receipt of written demand to SGCI from the United States or the Affected State  
3 to dispute the obligation to pay stipulated penalties in accordance with the  
4 provisions in Section XIII (Dispute Resolution) of this Consent Decree.

5 57. Stipulated penalties shall continue to accrue as provided in accordance with  
6 Paragraphs 47-55 during any dispute, with interest on accrued stipulated penalties  
7 payable and calculated at the rate established by the Secretary of the Treasury,  
8 pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

9 a. If the dispute is resolved by agreement, or by a decision of the United  
10 States pursuant to Section XIII (Dispute Resolution) of this Consent Decree  
11 that is not appealed to the Court, accrued stipulated penalties agreed or  
12 determined to be owing, together with accrued interest, shall be paid within  
13 thirty (30) Days of the effective date of the agreement or of the receipt of the  
14 United States and the Affected State's decision;

15 b. If the dispute is appealed to the Court and United States and/or the  
16 Affected State(s) prevail in whole or in part, SGCI shall, within sixty (60)  
17 Days of receipt of the Court's decision or order, pay all accrued stipulated  
18 penalties determined by the Court to be owing, together with interest  
19 accrued on such penalties determined by the Court to be owing, except as  
20 provided in Subparagraph c, below;

1 c. If the Court's decision is appealed by any Party, SGCI shall, within  
2 fifteen (15) Days of receipt of the final appellate court decision, pay all  
3 accrued stipulated penalties determined to be owed, together with interest  
4 accrued on such stipulated penalties determined to be owed by the appellate  
5 court.

6 58. Notwithstanding any other provision of this Consent Decree, the accrued  
7 stipulated penalties agreed by the Plaintiff, the Plaintiff-Intervenors, and SGCI, or  
8 determined by the United States and the Affected State(s) through Dispute  
9 Resolution, to be owed may be less than the stipulated penalty amounts set forth in  
10 Paragraphs 47-54.

11 59. All stipulated penalties shall be paid in the manner set forth in Section V  
12 (Civil Penalty) of this Consent Decree.

13 60. If SGCI fails to pay stipulated penalties according to the terms of this  
14 Consent Decree, SGCI shall be liable for interest on such penalties, as provided for  
15 in 28 U.S.C. § 1961.

16 61. The stipulated penalties provided for in this Consent Decree shall be in  
17 addition to any other rights, remedies, or sanctions available to the United States  
18 and the Affected State(s) by reason of SGCI's failure to comply with any  
19 requirement of this Consent Decree or applicable law, except that for any violation  
20 of relevant statutory, regulatory, or permitting requirements for which this Consent

1 Decree provides for payment of a stipulated penalty, the United States and the  
2 Affected State will elect whether to seek Stipulated Penalties or to seek statutory  
3 penalties for such violation.

## 4 XII. FORCE MAJEURE

5 62. "Force Majeure," for purposes of this Consent Decree, is defined as any  
6 event arising from causes beyond the control of SGCI, of any entity controlled by  
7 SGCI, or of SGCI's contractors, that delays or prevents the performance of any  
8 obligation under this Consent Decree despite SGCI's best efforts to fulfill the  
9 obligation. The requirement that SGCI exercise "best efforts to fulfill the  
10 obligation" includes using best efforts to anticipate any potential force majeure  
11 event and best efforts to address the effects of any such event (a) as it is occurring  
12 and (b) after it has occurred to prevent or minimize any resulting delay to the  
13 greatest extent possible. "Force Majeure" does not include SGCI's financial  
14 inability to perform any obligation under this Consent Decree.

15 63. If any event occurs or has occurred that may delay the performance of any  
16 obligation under this Consent Decree, whether or not caused by a Force Majeure  
17 event, SGCI shall provide notice orally or by electronic or facsimile transmission  
18 to EPA and the Affected State(s), within ten (10) Days of when SGCI first knew  
19 that the event might cause a delay, and within thirty (30) Days of when SGCI first  
20 knew that the event might cause a delay, SGCI shall provide in writing to EPA and

1 the Affected State an explanation and description of the reasons for the delay; the  
2 anticipated duration of the delay; all actions taken or to be taken to prevent or  
3 minimize the delay; a schedule for implementation of any measures to be taken to  
4 prevent or mitigate the delay or the effect of the delay; SGCI's rationale for  
5 attributing such delay to a Force Majeure event if it intends to assert such a claim;  
6 and a statement as to whether, in the opinion of SGCI, such event may cause or  
7 contribute to an endangerment to public health, welfare or the environment. SGCI  
8 shall include with any notice all available documentation supporting the claim that  
9 the delay was attributable to a Force Majeure. Failure to comply with the above  
10 requirements shall preclude SGCI from asserting any claim of Force Majeure for  
11 that event for the period of time of such failure to comply, and for any additional  
12 delay caused by such failure.

13 64. If EPA, after a reasonable opportunity for review and comment by the  
14 Affected State, agrees that the delay or anticipated delay is attributable to a Force  
15 Majeure event, the time for performance of the obligations under this Consent  
16 Decree that are affected by the Force Majeure event will be extended by EPA, after  
17 a reasonable opportunity for review and comment by the Affected State, for such  
18 time as is necessary to complete those obligations. An extension of the time for  
19 performance of the obligations affected by the Force Majeure event shall not, of  
20 itself, extend the time for performance of any other obligation. EPA will notify

1 SGC I in writing of the length of the extension, if any, for performance of the  
2 obligations affected by the Force Majeure event.

3 65. If EPA, after a reasonable opportunity for review and comment by the  
4 Affected State, does not agree that the delay or anticipated delay has been or will  
5 be caused by a Force Majeure event, EPA will notify SGC I in writing of its  
6 decision.

7 66. If SGC I elects to invoke the dispute resolution procedures set forth in  
8 Section XIII (Dispute Resolution), it shall do so no later than fifteen (15) Days  
9 after receipt of EPA's notice. In any such proceeding, SGC I shall have the burden  
10 of demonstrating by a preponderance of the evidence that the delay or anticipated  
11 delay has been or will be caused by a Force Majeure event, that the duration of the  
12 delay or the extension sought was or will be warranted under the circumstances,  
13 that best efforts were exercised to avoid and mitigate the effects of the delay, and  
14 that SGC I complied with the requirements of Paragraphs 62 and 63, above. If  
15 SGC I carries this burden, the delay at issue shall be deemed not to be a violation  
16 by SGC I of the affected obligation of this Consent Decree identified to EPA and  
17 the Court.

### 18 XIII. DISPUTE RESOLUTION

19 67. Unless otherwise expressly provided for in this Consent Decree, the dispute  
20 resolution procedures of this Section shall be the exclusive mechanism to resolve



1 disputes arising under or with respect to the Consent Decree. The procedures set  
2 forth in this Section do not apply to actions by the United States or an Affected  
3 State to enforce obligations of SGCI that have not been disputed in accordance  
4 with this Section.

5 68. Except as otherwise expressly provided in the Consent Decree, the dispute  
6 resolution procedures set forth in this Section shall be available to resolve any and  
7 all disputes arising under the Consent Decree, provided that the Party invoking the  
8 procedures has made a good faith attempt to resolve the matter with the other Party  
9 or Parties involved.

10 69. The dispute resolution procedure required herein shall be invoked upon the  
11 giving of written notice by one of the Parties to the Consent Decree to another  
12 advising the other appropriate Party(ies) of a dispute pursuant to Section XVII.  
13 The notice shall describe the nature of the dispute and shall state the noticing  
14 Party's position with regard to such dispute. The Party or Parties receiving such  
15 notice will acknowledge receipt of the notice and the Parties shall expeditiously  
16 schedule a meeting to discuss the dispute informally not later than fourteen (14)  
17 Days from the receipt of such notice.

18 70. Disputes submitted to dispute resolution shall, in the first instance, be the  
19 subject of informal negotiations between the Parties. Such period of informal  
20 negotiations shall not extend beyond thirty (30) Days from the date of the first

1 meeting between representatives of the Parties, unless the Parties involved in the  
2 dispute agree that this period should be shortened or extended.

3 71. In the event that the Parties are unable to reach agreement during such  
4 informal negotiations period, the United States and/or the Affected State(s), as  
5 applicable, shall provide SGCI with a written summary of its/their position  
6 regarding the dispute. The position advanced by the United States and/or the  
7 Affected State(s), as applicable, will be considered binding unless, within forty-  
8 five (45) Days of SGCI's receipt of the written summary, SGCI invokes formal  
9 dispute resolution by filing with the Court a petition which describes the nature of  
10 the dispute and SGCI's position on the dispute. The United States and/or the  
11 Affected State(s) shall respond to the petition within forty-five (45) Days of filing.

12 72. In the event that the United States and the Affected State(s) are unable to  
13 reach agreement among themselves with regard to SGCI's claim, the position of  
14 the United States shall be the final position.

15 73. In a formal dispute resolution proceeding under this Section, the Court shall  
16 decide all disputes pursuant to applicable principles of law for resolving such  
17 disputes. In their filings with the Court under Paragraph 71, the Parties shall state  
18 their respective positions as to the applicable standard of law for resolving the  
19 particular dispute.

74. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Section may be shortened upon motion of one of the Parties to the dispute or by agreement of the Parties to the dispute. The Parties do not intend that the invocation of this Section by a Party cause the Court to draw any inferences nor establish any presumptions adverse to either Party as a result of invocation of this section.

75. In appropriate circumstances, as part of the resolution of any matter submitted to the Court under this Section, the Parties involved in the dispute may agree to, or the Court may order, an extension or modification of the schedule for completion of work under the Consent Decree to account for the delay in the work that occurred as a result of dispute resolution. If appropriate, the Court may also order SGCI to mitigate any adverse environmental impacts resulting from SGCI's failure to timely perform any obligation under this Consent Decree. SGCI shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule. Invocation of dispute resolution with respect to any of SGCI's obligations under the Consent Decree shall not, of itself, excuse or extend the time for performance of any other obligation of SGCI under the Consent Decree.

XIV. INFORMATION COLLECTION AND RETENTION

76. The United States, the Affected States, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any of the Facilities covered by the Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under the Consent Decree;
- b. Verify any data or information submitted to the United States or an Affected State in accordance with the terms of the Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by SGCI or its representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess SGCI's compliance with the Consent Decree.

77. Until at least three years after the termination of the Consent Decree, SGCI shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that directly relates to SGCI's performance of its obligations under the Consent Decree. This information-

1 retention requirement shall apply regardless of any contrary corporate or  
2 institutional policies or procedures. At any time during this information-retention  
3 period, the United States or an Affected State may request copies of any  
4 documents, records, or other information required to be maintained under this  
5 Paragraph.

6 78. At the conclusion of the information retention period specified in the  
7 preceding Paragraph, SGCI shall notify the United States and the Affected States at  
8 least ninety (90) Days prior to destroying any document(s), record(s), or other  
9 information subject to the requirements of the preceding Paragraph and, upon  
10 request by the United States or an Affected State, SGCI shall deliver any such  
11 document(s), record(s), or other information to the requesting Party.

12 79. SGCI may assert that certain documents, records, or other information are  
13 privileged under the attorney-client privilege or any other privilege recognized by  
14 applicable state or federal law. If SGCI asserts such a privilege, it shall provide the  
15 following: (1) the title of the document, record, or information; (2) the date of the  
16 document, record, or information; (3) the name and title of each author of the  
17 document, record, or information; (4) the name and title of each addressee and  
18 recipient; (5) a description of the subject of the document, record, or information;  
19 and (6) the privilege asserted by SGCI. However, no documents, records, data, or

1 other information created or generated as required by the Consent Decree shall be  
2 withheld on grounds of privilege.

3 80. SGCI may also assert that information required to be provided under this  
4 Consent Decree is protected as Confidential Business Information (CBI) under 40  
5 C.F.R. Part 2. As to any information that SGCI seeks to protect as CBI, SGCI  
6 shall follow the procedures set forth in 40 C.F.R. Part 2.

7 81. The information retention requirements of Paragraphs 77 and 78 shall  
8 survive termination of the Consent Decree and shall be enforceable by this Court  
9 even after such termination. The Consent Decree in no way limits or affects any  
10 right of entry and inspection, or any right to obtain information, held by the United  
11 States or the Affected States pursuant to applicable federal or State laws,  
12 regulations, or permits, nor does it limit or affect any duty or obligation of SGCI to  
13 maintain documents, records, or other information imposed by applicable federal  
14 or State laws, regulations, or permits.

15 XV. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS

16 82. Entry of this Consent Decree shall resolve all civil liability of SGCI to the  
17 United States and the Affected States that arose from any construction,  
18 modification, or change in the method of operation commenced at any SGCI  
19 Facility prior to the Date of Lodging of this Consent Decree, under any or all of:

- 1 a. Parts C or D of Subchapter I of the Clean Air Act, 42  
2 U.S.C. §§ 7470-7492, 7501-7515 7515, and the regulations  
3 promulgated thereunder at 40 C.F.R. § 52.21, 40 C.F.R. §§  
4 51.165 (a) and (b), 40 C.F.R. Part 51, Appendix S, and 40  
5 C.F.R. § 52.24;
- 6 b. Section 111 of the Clean Air Act, 42 U.S.C. § 7411, and  
7 40 C.F.R. Part 60 Subparts A and CC;
- 8 c. The federally-approved and enforceable State  
9 Implementation Plan for each State;
- 10 d. Sections 502(a) and 504(a) of Title V of the Clean Air Act,  
11 42 U.S.C. §§ 7661a(a) and 7661c(a), but only to the extent  
12 that such claims are based on SGCI's failure to obtain a  
13 Permit that reflects applicable requirements imposed under  
14 Parts C or D of Subchapter I, or Section 111 of the Clean  
15 Air Act;
- 16 e. Any State or local law counterparts to the provisions above  
17 in this Paragraph;
- 18 f. Any allegations set forth in the Notice of Violation issued  
19 January 13, 2008, or the Complaints; or

1 g. Violations at the Ruston Facility alleged in LDEQ  
2 Consolidated Compliance Order and Notice of Potential  
3 Penalty dated August 8, 2005 and amended on September  
4 18, 2006 and October 19, 2007, Enforcement Tracking  
5 Nos. AE-CN-05-0098, AE-CN-05-0098A, and AE-CN-05-  
6 0098B, respectively.

7 The terms "construction" and "modification" as used in this Paragraph  
8 shall have the meanings those terms are given under the Clean Air Act  
9 and under the implementing regulations in effect on or prior to the Date of  
10 Lodging of this Consent Decree or any State or local counterpart, rule or  
11 regulation in effect on or prior to the Date of Lodging. The resolution of  
12 liability set forth in this Paragraph shall apply and only apply for the  
13 pollutants NO<sub>x</sub>, SO<sub>2</sub>, sulfuric acid mist, and PM (including PM<sub>10</sub>, and  
14 PM<sub>2.5</sub>), and shall not apply to any other pollutant.

15 83. The United States and the Affected States reserve all legal and equitable  
16 remedies available to enforce the provisions of the Consent Decree, except as  
17 expressly stated in Paragraph 82. The Consent Decree shall not be construed to  
18 limit the rights of the United States or the Affected States to obtain penalties or  
19 injunctive relief under the Act or implementing regulations, or under other federal



1 or State laws, regulations, or permit conditions, except as expressly specified in  
2 Paragraph 82.

3 84. The United States and the Affected States further reserve all legal and  
4 equitable remedies to address any situation that may present an imminent and  
5 substantial endangerment to the public health or welfare or the environment arising  
6 at, or posed by, SGCI's Facilities, whether related to the violations addressed in  
7 this Consent Decree or otherwise.

8 85. In any subsequent administrative or judicial proceeding initiated by the  
9 United States or the Affected State(s) for injunctive relief, civil penalties, other  
10 appropriate relief relating to the Facilities or SGCI's violations, SGCI shall not  
11 assert, and may not maintain, any defense or claim based upon the principles of  
12 waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-  
13 splitting, or other defenses based upon any contention that the claims raised by the  
14 United States or the Affected State(s) in the subsequent proceeding were or should  
15 have been brought in the instant case, except with respect to claims that have been  
16 specifically resolved pursuant to Paragraph 82 of this Section.

17 86. This Consent Decree is not a permit, or a modification of any permit, under  
18 any federal, State, or local laws or regulations. SGCI is responsible for achieving  
19 and maintaining compliance with all applicable federal, State, and local laws,  
20 regulations, and permits; and SGCI's compliance with the Consent Decree shall be



1 no defense to any action commenced pursuant to any such laws, regulations, or  
2 permits, except as set forth herein. The United States and the Affected States do  
3 not, by their consent to the entry of this Consent Decree, warrant or aver in any  
4 manner that SGCI's compliance with any aspect of this Consent Decree will result  
5 in compliance with provisions of the Act, or with any other provisions of federal,  
6 State, or local laws, regulations, or permits.

7 87. This Consent Decree does not limit or affect the rights of SGCI or of the  
8 United States or the Affected States against any third parties, not party to the  
9 Consent Decree, nor does it limit the rights of third parties, not party to the  
10 Consent Decree, against SGCI, except as otherwise provided by law.

11 88. This Consent Decree shall not be construed to create rights in, or grant any  
12 cause of action to, any third party that is not a Party to the Consent Decree.

#### 13 XVI. COSTS

14 89. The Parties shall bear their own costs of this action, including attorneys'  
15 fees, except that if the United States and/or an Affected State are the prevailing  
16 party(ies) they shall be entitled to collect the costs (including attorneys' fees)  
17 incurred in any action necessary to collect any portion of the civil penalty or any  
18 stipulated penalties due but not paid by SGCI.

## XVII. NOTICES

90. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, SGCI's submissions shall be deemed submitted on the date they are sent either by overnight delivery service or by certified or registered mail, return receipt requested. When SGCI is required to submit notices or communicate in writing to the United States and the Affected State relating to one of the SGCI's Facilities, SGCI shall also submit a copy of that notice or other writing to the United States and the Affected State for the Facility located in that State. Except as otherwise provided herein, when written notification or communication is required by this Consent Decree, it shall be addressed as follows, unless a Party notifies all other Parties in writing to provide notification to a different addressee:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611

U.S. Attorney, W.D. Washington  
5220 United States Courthouse  
700 Stewart Street  
Seattle, WA 98101-1671

As to the U.S. Environmental Protection Agency:

Director



1 Air Enforcement Division (2242A)  
2 Office of Enforcement and Compliance Assurance  
3 U.S. Environmental Protection Agency  
4 1200 Pennsylvania Avenue, N.W.  
5 Washington, D.C. 20004

6 with a hard copy to:  
7 Director  
8 Air Enforcement Division  
9 Office of Enforcement and Compliance Assurance

10 With copies to the EPA Regional office where the relevant Facility is located:

11 EPA Region 1:

12 Director  
13 Office of Environmental Stewardship  
14 U.S. Environmental Protection Agency – Region 1  
15 One Congress Street (Mailcode SAA)  
16 Boston, MA 02114-2023

17 EPA Region 2:

18 Kenneth Eng, Air Compliance Branch Chief  
19 Division of Enforcement and Compliance Assistance  
20 U.S. Environmental Protection Agency – Region 2  
21 290 Broadway - 21st Floor  
22 New York, NY 10007

23 and

24 Flaire Hope Mills, Air Branch Chief  
25 Office of Regional Counsel  
26 U.S. Environmental Protection Agency – Region 2  
27 290 Broadway - 16th Floor  
28 New York, NY 10007

29 EPA Region 3:

30 Mr. Christopher Pilla, Chief

1 Air Enforcement Branch  
2 Mail Code 3AP12  
3 U.S. Environmental Protection Agency – Region 3  
4 1650 Arch Street  
5 Philadelphia, PA 19103

6 EPA Region 4:

7 Director  
8 Division of Enforcement and Compliance Assistance  
9 U.S. Environmental Protection Agency – Region 4  
10 Sam Nunn Atlanta Federal Center  
11 61 Forsyth Street, SW  
12 Atlanta, GA 30303-3104

13 EPA Region 5:

14 Compliance Tracker, AE-17J  
15 Air Enforcement and Compliance Assurance Branch  
16 U.S. Environmental Protection Agency – Region 5  
17 77 West Jackson Blvd.  
18 Chicago, IL 60604

19 EPA Region 6:

20 Associate Director  
21 Air, Toxics, and Inspection Coordination Branch (6EN-A)  
22 Compliance Assurance and Enforcement Division  
23 U.S. Environmental Protection Agency – Region 6  
24 1445 Ross Avenue  
25 Dallas, TX 75202

26 EPA Region 7:

27 Director  
28 Air and Waste Management Division  
29 U.S. Environmental Protection Agency – Region 7  
30 901 North 5<sup>th</sup> Street  
31 Kansas City, KS 66101

1 EPA Region 9:

2 Director  
3 Air Division  
4 U.S. Environmental Protection Agency – Region 9  
5 75 Hawthorne Street  
6 San Francisco, CA 94105  
7 Attention: Air Enforcement Office (AIR-5)

8 EPA Region 10:

9 Director  
10 Office of Compliance and Enforcement  
11 U.S. Environmental Protection Agency – Region 9  
12 1200 Sixth Ave, Suite 900, OCE-127  
13 Seattle, WA 98101

14 As to Plaintiff-Intervenor, the Commonwealth of Massachusetts:

15 For the Massachusetts Department of Environmental Protection:

16 Department of Environmental Protection  
17 Central Regional Office  
18 627 Main Street  
19 Worcester, MA 01605  
20 Attn: Tom Cusson, Section Chief

21 For the Massachusetts Attorney General:

22 Office of the Attorney General  
23 1 Ashburton Place, 18th Floor  
24 Boston, MA 02108  
25 Attn: Frederick D. Augenster, Environmental Protection Division

26 As to Plaintiff-Intervenor, the State of Pennsylvania:

27 Staci Gustafson, Operations Chief  
28 Air Quality Program  
29 Pennsylvania Department of Environmental Protection  
30 Meadville Regional Office

1 230 Chestnut Street  
2 Meadville, PA 16335

3 As to Plaintiff-Intervenor, the State of North Carolina:

4 All notices and reports required from St. Gobain should be mailed, first class  
5 postage prepaid to:

6 Patrick Butler, Regional Air Quality Supervisor  
7 Raleigh Regional Office  
8 Department of Environment and Natural Resources  
9 3800 Barrett Drive, Suite 101  
10 Raleigh, NC 27609

11 As to the Plaintiff-Intervenor, the State of Illinois:

12 Ray Pilapil  
13 Illinois EPA  
14 Bureau of Air, Compliance Section  
15 1021 North Grand Avenue East  
16 P.O. Box 19276  
17 Springfield, IL 62794-9276

18 As to the Plaintiff-Intervenor, State of Indiana and its Department of  
19 Environmental Management

20 Indiana Department of Environmental Management  
21 100 N. Senate Ave.  
22 Mail Code 61-53 IGCN 1003  
23 Indianapolis, IN 46204-2251

24 As to Plaintiff-Intervenor, the State of Wisconsin

25 Southeast Region Air Supervisor - Team 1  
26 2300 North Dr. Martin Luther King Jr. Drive  
27 Milwaukee, WI 53212

28 As to Plaintiff-Intervenor, the Oklahoma Department of Environmental Quality:

29 Eddie Terrill, Director

1 Air Quality Division  
2 P.O. Box 1677  
3 Oklahoma City, OK 73101-1677

4 As to Plaintiff-Intervenor, the State of Louisiana, on behalf of Louisiana  
5 Department of Environmental Quality:

6 Administrator, Enforcement Division  
7 Office of Environmental Compliance  
8 Louisiana Department of Environmental Quality  
9 P. O. Box 4312  
10 Baton Rouge, LA 70821-4312

11 As to the Plaintiff-Intervenor, the State of Missouri, Department of Natural  
12 Resources

13 For the Missouri Department of Natural Resources:  
14 James L. Kavanaugh, Director  
15 Air Pollution Control Program  
16 Missouri Department of Natural Resources  
17 P.O. Box 176  
18 Jefferson City, MO 65102

19 For the Missouri Attorney General's Office:

20 Timothy P. Duggan, Assistant Attorney General  
21 Attorney General of Missouri  
22 P.O. Box 899  
23 Jefferson City, MO 65102

24 As to Plaintiff-Intervenor, the Washington State Department of Ecology:

25 Stuart Clark  
26 Manager, Air Quality Program  
27 Washington State Department of Ecology  
28 PO Box 47600  
29 Olympia, WA 98504-7600

30 As to Plaintiff-Intervenor, the San Joaquin Valley Unified Air Pollution Control  
31 District:



1 San Joaquin Valley Air Pollution Control District  
2 1990 East Gettysburg Avenue  
3 Fresno, CA 93726-0244  
4 Phone Number: (559) 230-6000  
5 FAX: (559) 230-6062  
6 District Contact: Jon Adams, (559) 230-5965

7 As to Plaintiff-Intervenor, the Puget Sound Clean Air Agency:

8 Dennis McLerran, Executive Director  
9 Puget Sound Clean Air Agency  
10 1904 3rd Ave, Suite 105  
11 Seattle, WA 98101

12 As to SGCI:

13 Stephen A. Segebarth  
14 General Counsel  
15 Saint-Gobain Containers, Inc.  
16 1509 South Macedonia Avenue  
17 P.O. Box 4200  
18 Muncie, IN 47307-4200

19 Philip D. McPherson  
20 Senior Vice President, Technology  
21 Saint-Gobain Containers, Inc.  
22 1509 South Macedonia Avenue  
23 P.O. Box 4200  
24 Muncie, IN 47307-4200

25 John W. Carroll  
26 Pepper Hamilton, LLP  
27 100 Market Street  
28 Harrisburg, PA 17108

XVIII. SALES OR TRANSFERS OF OPERATIONAL OR OWNERSHIP  
INTERESTS

91. If SGCI proposes to sell or transfer an operational or ownership interest in any Facility to an entity unrelated to SGCI (Third Party), it shall advise the Third Party in writing of the existence of this Consent Decree prior to such closing, and shall send a copy of such written notification to the United States and the Affected State pursuant to Section XVII (Notices) of this Consent Decree prior to such proposed closing.

92. SGCI shall condition any transfer, in whole or in part, of ownership, operation of, or other interest in any of the Facilities that are subject of the Consent Decree upon the execution by the Third Party of a modification to the Consent Decree, making the terms and conditions of the Decree that apply to such Facility applicable to the Third Party. SGCI shall submit the application for modification to the Court promptly upon such transfer making the terms and conditions of the Consent Decree that apply to such Facility applicable to the Third Party.

93. Upon approval by the Court of such modification, pursuant to Section XXI (Modification) of this Consent Decree making the Third Party a party to this Consent Decree and liable for all the requirements of this Decree that may be applicable to the transferred or purchased interests, SGCI shall be released from the obligations and liabilities of this Consent Decree as to the transferred or

1 purchased interests, provided that all Civil Penalties pursuant to Section V (Civil  
2 Penalty) have been fully paid and all Supplemental Environmental Projects  
3 pursuant to Section VI (Supplemental Environmental Project) have been fully  
4 funded or implemented.

5 94. This Consent Decree shall not be construed to impede the transfer of any  
6 interests between SGCI and any Third Party so long as the requirements of this  
7 Consent Decree are met. This Section XVIII applies to transfers of assets or  
8 interest only, and shall not be construed to affect or apply to mergers or other  
9 corporate transactions in which the shares of SGCI or its affiliate corporation are  
10 acquired by any Third Party and the surviving corporation, by operation of law,  
11 assumes all of the assets and liabilities of SGCI pursuant to this Consent Decree  
12 related to the Facilities.

13 95. Notwithstanding the foregoing, however, SGCI may not assign, and may not  
14 be released from, any obligation under this Consent Decree that is not specific to  
15 the purchased or transferred interests, including Section V (Civil Penalty) and  
16 Section VI (Supplemental Environmental Project).

17 XIX. EFFECTIVE DATE

18 96. The Effective Date of the Consent Decree shall be the Date of Entry.

1 XX. RETENTION OF JURISDICTION

2 97. The Court shall retain jurisdiction of this case after the Date of Entry of this  
3 Consent Decree to enforce compliance with the terms and conditions of this  
4 Consent Decree and to take any action necessary or appropriate for its  
5 interpretation, construction, execution, modification, or adjudication of disputes.  
6 During the term of this Consent Decree, any Party to this Consent Decree may  
7 apply to the Court for any relief necessary to construe or effectuate this Consent  
8 Decree.

9 98. The Court shall retain jurisdiction over this case for the purpose of resolving  
10 disputes arising under this Consent Decree or entering orders modifying this  
11 Decree, pursuant to Sections XIII and XXI, or effectuating or enforcing  
12 compliance with the terms of this Decree.

13 XXI. MODIFICATION

14 99. The terms of this Consent Decree may be modified (including the event of a  
15 partial termination) only by a subsequent written agreement signed by the United  
16 States, the applicable Affected State(s) and SGCI. Where the modification  
17 constitutes a material change to any term of this Consent Decree, it shall be  
18 effective only upon approval by the Court.

100. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII (Dispute Resolution). The Party seeking modification bears the burden of demonstrating that it is entitled to the requested modification.

## XXII. GENERAL PROVISIONS

101. This Consent Decree does not apply to any claim(s) of alleged criminal liability.

102. SGCI reserves the right to permanently cease Operating a Furnace in lieu of installing or continuing to operate controls on that Furnace required under Paragraphs 7 through 9.

103. At any time prior to termination of this Consent Decree, SGCI may request approval from EPA and the Affected State(s) to implement other control technology for NO<sub>x</sub>, SO<sub>2</sub>, or PM than what is required by this Consent Decree (except for the installation of SCR on the Dolton Facility, which must be installed regardless of other available technology). In seeking such approval, SGCI must demonstrate that such alternative control technology is capable of achieving pollution reductions equivalent to the technology required in Tables 2, 3, and 5 for the SGCI Furnace at which SGCI seeks approval to implement such other control technology for NO<sub>x</sub>, SO<sub>2</sub>, or PM. Such alternative control technology may also confer environmental benefit, such as through reducing greenhouse gas emissions (e.g. carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur

1 hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFCs), perfluorochemicals (PFCs), and  
2 other fluorinated gases (e.g., nitrogen trifluoride and hydrofluorinated ethers  
3 (HFEs)). SGCI must also demonstrate that it can achieve monitoring equal to or  
4 better than what is required in Table 8. Approval or denial of such a request shall  
5 be made by EPA after consultation with the Affected State(s) and SGCI may  
6 invoke Dispute Resolution under Section XIII of this Decree.

7 104. Each limit and/or other requirement established by or under this Consent  
8 Decree is a separate, independent requirement.

9 105. Performance standards, emissions limits, and other quantitative standards set  
10 by or under this Consent Decree must be met to the number of significant digits in  
11 which the standard or limit is expressed. For example, an emission rate of 0.100 is  
12 not met if the actual emission rate is 0.101. SGCI shall round the fourth significant  
13 digit to the nearest third significant digit, or the third significant digit to the nearest  
14 second significant digit, depending upon whether the limit is expressed to three or  
15 two significant digits. For example, if an actual emission rate is 3.84, that shall be  
16 reported as 3.8, and shall be in compliance with an emission rate of 3.8, and if an  
17 actual emission rate is 3.85, that shall be reported as 3.9, and shall not be in  
18 compliance with an emission rate of 3.8. SGCI shall report data to the number of  
19 significant digits in which the standard or limit is expressed.

106. This Consent Decree does not limit, enlarge, or affect the rights of any Party to this Consent Decree as against any third parties.

107. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree, and supersedes all prior agreements and understandings among the Parties related to the subject matter herein. No document, representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall they be used in construing the terms of this Consent Decree.

#### XXIII. TERMINATION

108. After SGCI has completed the requirements of this Consent Decree, has paid the civil penalty, and any accrued stipulated penalties as required by this Consent Decree, SGCI may serve upon the United States and the Affected States a Request for Termination, stating that SGCI has satisfied those requirements, together with all necessary supporting documentation. If SGCI has completed the requirements of this Consent Decree as to any Facility, SGCI may seek to terminate the requirements of this Consent Decree as to that Facility through the Modification procedures set forth in Section XXI.

109. Following receipt by the United States and the Affected States of SGCI's Request for Termination, the Parties shall confer informally concerning the

1 Request for Termination and any disagreement that the Parties may have as to  
2 whether SGCI has satisfactorily complied with the requirements for termination of  
3 this Consent Decree. If the United States, after consultation with the Affected  
4 States, agrees that the Consent Decree may be terminated, the Parties shall submit,  
5 for the Court's approval, a joint stipulation terminating the Consent Decree.

6 110. If the United States, after consultation with the Affected States, does not  
7 agree that the Decree may be terminated, SGCI may invoke Dispute Resolution  
8 under Section XIII of this Decree. However, SGCI shall not seek Dispute  
9 Resolution of any dispute regarding termination, under Paragraph 71 (Formal  
10 Dispute Resolution) of Section XIII until sixty (60) Days after service of its  
11 Request for Termination.

#### 12 XXIV. PUBLIC PARTICIPATION

13 111. The Consent Decree shall be lodged with the Court for a period of not less  
14 than thirty (30) Days for public notice and comment in accordance with 28 C.F.R.

15 § 50.7. The United States reserves the right to withdraw or withhold its consent if  
16 the comments regarding the Consent Decree disclose facts or considerations  
17 indicating that the Consent Decree is inappropriate, improper, or inadequate.

18 SGCI consents to entry of the Consent Decree without further notice. SGCI agrees  
19 not to oppose entry of this Consent Decree by the Court or to challenge any



1 provision of the Consent Decree, unless the United States has notified SGCI in  
2 writing that it no longer supports entry of the Consent Decree.

3 112. The Parties agree and acknowledge that final approval by Affected States  
4 and entry of this Consent Decree are subject to the requirements of those State  
5 statutes providing for public notice, public comment, and concurrence by State and  
6 local officials, including Attorneys General (Public Notice Affected States). The  
7 Public Notice Affected States that are subject to those requirements reserve the  
8 right to withdraw or withhold consent if the comments regarding the Consent  
9 Decree disclose facts or considerations which indicate that the Consent Decree is  
10 inappropriate, improper or inadequate. SGCI agrees not to oppose entry of the  
11 Consent Decree by the Court or to challenge any provision of the Consent Decree,  
12 unless a Public Notice Affected State has notified SGCI in writing that it no longer  
13 supports entry of the Decree. The Parties agree that this decree shall not be entered  
14 by the Court unless all Parties are bound by its terms and conditions.

#### 15 XXV. SIGNATORIES AND SERVICE

16 113. Each undersigned representative of SGCI and the Affected States, and the  
17 Assistant Attorney General for the Environment and Natural Resources Division of  
18 the Department of Justice (or his or her designee) certifies that he or she is fully  
19 authorized to enter into the terms and conditions of the Consent Decree and to  
20 execute and legally bind the Party he or she represents to this document.

1 114. This Consent Decree may be signed in counterparts, and its validity shall not  
2 be challenged on that basis.

3 115. SGCI agrees to accept service of process by mail with respect to all matters  
4 arising under or relating to the Consent Decree and to waive the formal service  
5 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and  
6 any applicable Local Rules of this Court including, but not limited to, service of a  
7 summons.

8 XXVI. INTEGRATION

9 116. This Consent Decree constitutes the final, complete, and exclusive  
10 agreement and understanding among the Parties with respect to the settlement  
11 embodied in the Decree and supercedes all prior agreements and understandings,  
12 whether oral or written, concerning the settlement embodied herein. Other than  
13 deliverables that are subsequently submitted and approved pursuant to this Decree,  
14 no other document, nor any representation, inducement, agreement, understanding,  
15 or promise, constitutes any part of this Decree or the settlement it represents, nor  
16 shall it be used in construing the terms of this Decree.

17 XXVII. FINAL JUDGMENT

18 117. Upon approval and entry of the Consent Decree by the Court, this Consent  
19 Decree shall constitute a final judgment of the Court in this action as to the United  
20 States, the States, and SGCI. The Court finds that there is no just reason for delay

1 And therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and  
2 58.

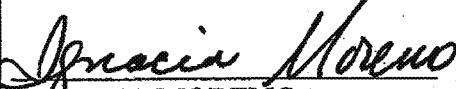
3 IT IS SO ORDERED.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2010

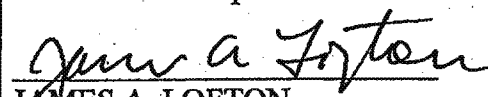
5  
6  
7 \_\_\_\_\_  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

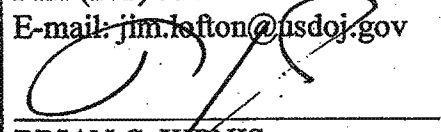
4 FOR PLAINTIFF UNITED STATES OF AMERICA:

5   
6 IGNACIA MORENO  
7 Assistant Attorney General  
8 Environment and Natural Resources Division  
9 United States Department of Justice

DATED: 12/21/09

10   
11 JAMES A. LOFTON  
12 Senior Counsel  
13 Environmental Enforcement Section  
14 Environment and Natural Resources Division  
15 United States Department of Justice  
16 Post Office Box 7611  
17 Washington, D.C. 20044  
18 Telephone: (202) 514-2445  
19 Fax: (202) 514-0097  
20 E-mail: [jim.lofton@usdoj.gov](mailto:jim.lofton@usdoj.gov)

DATED: 12/15/09

21   
22 BRIAN C. KIPNIS  
23 Assistant United States Attorney  
24 5220 United States Courthouse  
25 700 Stewart Street  
26 Seattle, WA 98101-1671  
27 Telephone: (206) 553-7970  
28 Fax: (206) 553-4073  
29 E-mail: [brian.kipnis@usdoj.gov](mailto:brian.kipnis@usdoj.gov)  
30


DATED: 1/15/10

CONSENT DECREE BETWEEN PLAINTIFF UNITED STATES OF AMERICA ET AL.  
AND DEFENDANT SAINT-GOBAIN CONTAINERS, INC. - 156

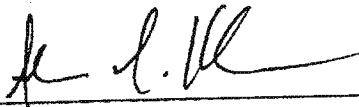
UNITED STATES ATTORNEY  
5220 UNITED STATES COURTHOUSE  
700 STEWART STREET  
SEATTLE, WASHINGTON 98101-1271  
(206) 553-7970

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

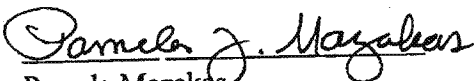
4 FOR PLAINTIFF UNITED STATES OF AMERICA:

5   
6  
7 Cynthia Giles  
8 Assistant Administrator  
9 Office of Enforcement and Compliance Assurance  
10 U.S. Environmental Protection Agency


DATED: 1/18/10

11   
12  
13 Adam M. Kushner  
14 Director  
15 Office of Civil Enforcement  
16 Office of Enforcement and Compliance Assurance  
17 U.S. Environmental Protection Agency

DATED: 1/18/10

18  
19   
20 Pamela Mazakas  
21 Acting Director  
22 Air Enforcement Division  
23 Office of Civil Enforcement

DATED: 1/18/10

24   
25  
26 Robert Fentress  
27 Attorney-Advisor  
28 Air Enforcement Division  
29 Office of Civil Enforcement  
30

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; Commonwealth of Massachusetts:

5 MARTHA COAKLEY

6 Attorney General



DATED: 11/24/09

8 FREDERICK D. AUGENSTERN

9 BBO# 553102

10 Assistant Attorney General

11 Environmental Protection Division

12 1 Ashburton Place, 18th Floor

13 Boston, Massachusetts 02108

14 (617) 963-2427

15 Fred.augenstern@state.ma.us


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR: Commonwealth of Pennsylvania --  
Department of Environmental Protection

5   
6 JOHN F. GUTH

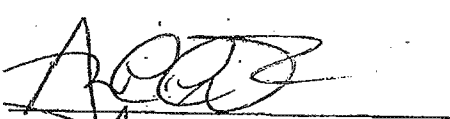
DATED: 11/16/09

7 Regional Manager, Air Quality Program  
8 Pennsylvania Department of Environmental Protection.

9 

DATED: 1/14/10

10 SUSAN SHINKMAN,  
11 Chief Counsel  
12 Pennsylvania Department of Environmental Protection

13 

DATED: 1.14.10

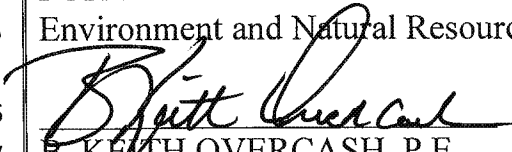
14 Name: Andrew C. Clark  
15 Pennsylvania Office of General Counsel

CONSENT DECREE BETWEEN PLAINTIFF UNITED STATES OF AMERICA ET AL.  
AND DEFENDANT SAINT-GOBAIN CONTAINERS, INC. -- 159

UNITED STATES ATTORNEY  
520 UNITED STATES COURTHOUSE  
700 STEWART STREET  
SEATTLE, WASHINGTON 98101-1271  
(206) 533-7970

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; North Carolina Department of  
5 Environment and Natural Resources

6   
7 B. KEITH OVERCASH, P.E.

DATED: 11/16/2009

8 Director of North Carolina Division of Air Quality  
9 North Carolina Department of Environmental and Natural Resources  
10

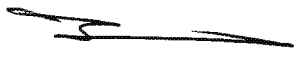


1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; State of Illinois:  
5 FOR THE STATE OF ILLINOIS

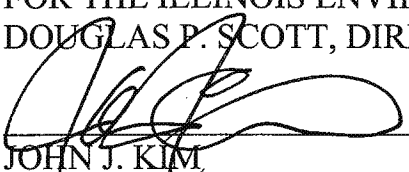
6 PEOPLE OF THE STATE OF ILLINOIS *ex rel.*  
7 LISA MADIGAN  
8 Attorney General of the State of Illinois  
9 MATTHEW J. DUNN, Chief

10 Environmental Enforcement Division/Asbestos  
11 Litigation Division

12   
13 THOMAS DAVIS, Chief  
14 Environmental Bureau  
15 Assistant Attorney General

DATED: 12/17/09

16 FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:  
17 DOUGLAS P. SCOTT, DIRECTOR

18   
19 JOHN J. KIM  
20 Chief Legal Counsel  
21

DATED: 12/23/09

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; State of Indiana and its Department of  
5 Environmental Management


6 

DATED: NOVEMBER 20, 2009

7 THOMAS W. EASTERLY

8 Commissioner

9 Indiana Department of Environmental Management

10 

DATED: November 24, 2009

11 PATRICIA MORLOFF ERDMANN

12 Deputy Attorney General and

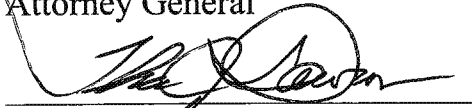
13 Chief Counsel for Litigation

14

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; State of Wisconsin


5 J.B. VAN HOLLEN  
6 Attorney General

7   
8 THOMAS J. DAWSON  
9 Assistant Attorney General  
10 Wisconsin Department of Justice  
11 17 West Main Street  
12 P.O. Box 7857  
13 Madison, Wisconsin 53707-7857  
14 (608) 266-8987  
15 (608) 266-2250 (Fax)  
16 dawsontj@doj.state.wi.us  
17

DATED: 11.24.09

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; Oklahoma Department of Environmental  
5 Quality

6 

DATED: 12-9-09

7 STEVEN A. THOMPSON

8 Executive Director

9 Oklahoma Department of Environmental Quality

10

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

by 4 *Preliminary approval*  
5 FOR THE PLAINTIFF-INTERVENOR; the State of Louisiana, through the  
6 Louisiana Department of Environmental Quality

7 *Peggy M. Hatch*  
8 PEGGY M. HATCH

9 Assistant Secretary  
10 Office of Environmental Compliance  
11 Louisiana Department of Environmental Quality

DATED: *November 18, 2009*


11 *Kathy Wright*  
12 KATHY WRIGHT (LA. # 30804)

13 Attorney  
14 Office of the Secretary  
15 Legal Affairs Division  
16 Louisiana Department of Environmental Quality  
17 Post Office Box 4302  
18 Baton Rouge, Louisiana 70821-4302  
19

DATED: *11/18/09*

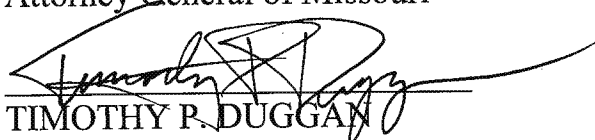
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; State of Missouri, Department of Natural  
5 Resources:

6   
7 LEANNE TIPPETT MOSBY  
8 Acting Director  
9 Division of Environmental Quality  
10 Missouri Department of Natural Resources  
11 P.O. Box 176  
12 Jefferson City, MO 65102

DATED: 12/15/09

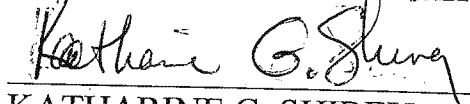
13 FOR THE PLAINTIFF-INTERVENOR; State of Missouri, Attorney General's  
14 Office:

15 CHRIS KOSTER  
16 Attorney General of Missouri  
17   
18 TIMOTHY P. DUGGAN  
19 Assistant Attorney General  
20 P.O. Box 899  
21 Jefferson City, MO 65102-0899  
22 FAX: 573-751-~~8464~~ 8796  
23 Phone: 573-751-9802  
24 Email: tim.duggan@ago.mo.gov  
25

DATED: 12/2/09

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; Washington State Department of Ecology

5 

DATED: 11/18/09

6 KATHARINE G. SHIREY

7 Assistant Attorney General

8 2425 Bristol Court SW, 2nd Floor

9 P.O. Box 40117

10 Olympia, WA 98504-0117

11 STUART CLARK

12 Manager, Air Quality Program

13 Washington State Department of Ecology

14 PO Box 47600

15 Olympia, WA 98504-7600

16 

DATED: 11/17/09

17 STUART CLARK

18 Manager, Air Quality Program

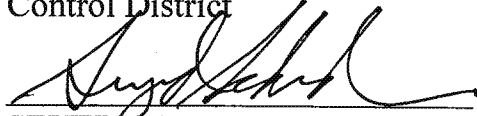
19 Washington State Department of Ecology

20 PO Box 47600

21 Olympia, WA 98504-7600

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; San Joaquin Valley Unified Air Pollution  
5 Control District

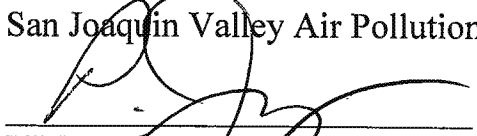
6 

DATED: 11/25/09

7 SEYED SADREDIN

8 Air Pollution Control Officer

9 San Joaquin Valley Air Pollution Control District

10 

DATED: 11.25.09

11 PHIL JAY

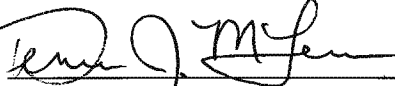
12 District Counsel

13 San Joaquin Valley Air Pollution Control District  
14



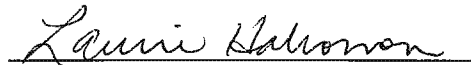
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE PLAINTIFF-INTERVENOR; Puget Sound Clean Air Agency

5 

DATED: 11/25/09

6 DENNIS MCLERRAN, Executive Director  
7 Puget Sound Clean Air Agency  
8 1904 3rd Ave, Suite 105  
9 Seattle WA 98101


10 

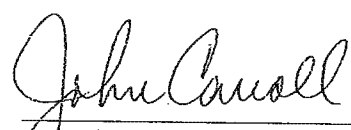
DATED: 11/25/09

11 LAURIE HALVORSON, General Counsel  
12 Puget Sound Clean Air Agency  
13 1904 3rd Ave, Suite 105  
14 Seattle WA USA 98101

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of  
2 *United States v. Saint-Gobain Containers, Inc.* (W.D. Wash.), relating to alleged  
3 violations of the Clean Air Act:

4 FOR THE DEFENDANT; Saint-Gobain Containers, Inc.

5  
6  
7  
8   
9 JOSEPH R. GREWE  
President and Chief Executive Officer  
Saint-Gobain Containers, Inc.  
1509 South Macedonia Avenue  
P.O. Box 4200  
Muncie, IN 47307-4200

10  
11  
12  
13  
14  
15   
16 JOHN W. CARROLL, Esquire  
17 Pepper Hamilton LLP  
18 Counsel to Saint-Gobain Containers, Inc.

## EXHIBIT A

Startup Assessment Log for Plant \_\_\_\_\_ Furnace\_\_\_\_\_


















After the "seal-up" phase, if the below operating criteria are all met for 5 continuous days, there would be a presumption that the Startup could be ended early if the 70th day after startup has not yet occurred.

**SGCI Instructions:** Each day beginning at the end of "Seal-Up" phase, the responsible Corporate Furnace Engineer is responsible to assess, (or have an assigned designated substitute assess) each item. For each item not meeting the condition described, mark "n" in the box next to that item and enter a comment. Otherwise mark "y".

Day after "Seal up" day which occurred on:

[illegible]

gc

**EXHIBIT B**

May 12, 2009

Via: E-mail and U.S. Mail

NJDEP Division of Air Quality  
Mr. Robert Esposito  
Air Quality Permitting Element  
401 E. State Street; 2<sup>nd</sup> Floor  
P.O. Box 27  
Trenton, NJ 08625

**RE: Saint-Gobain Consent Decree – Surrender of Banked Emission Credits**

Dear Mr. Esposito:

Pursuant to the terms of a soon-to-be lodged Consent Decree between Saint-Gobain Containers, Inc. ("SGCI") and the United States, SGCI requests that all of its remaining emission credits in the New Jersey Emission Credit Bank at Bank Log Numbers BK-99-0013 and BK-99-0014 be permanently retired and removed from its accounts. These emission credits are associated with the permanent shutdown of two glass furnaces at the Millville facility; formerly located at 328 South Second Street, Millville, New Jersey.

Please confirm in writing a verification that all credits have been permanently surrendered and retired and specifying how many credits were actually retired. Please contact me at 765)741-7994 if you have questions about this request.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "SBS", with a horizontal line extending to the right.

Steven B. Smith  
VP Environmental Affairs

SBS